IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 594 OF 2006
IN
COMPANY APPLICATION NO. 101 OF 2005

Rai Bahadur Gujarmal Modi & Bros. Pvt.Ltd., a Company incorporated under the Companies Act,1956, its registered office at Modi Bhawan, Modinagar -201 204	.. Appellant (Org.Applicant-Company)
V/s.	
1. Godfrey Philips India Ltd., Registered office at Satam Industrial Estate, 3rd Floor, Cardinal Gracious Rd.,Chakala, Andheri (E),Mumbai-400 099. 2. Mr.K.K.Modi, residing at A-1,Maharani Buag, New Delhi -110 065.	.. Respondents (Org.Respondent - Company)

Mr.S.H.Doctor, Sr.Counsel with Mr.M.S.Doctor & Kalpesh Joshi i/by M/s.Malvi Ranchoddas & Co.for the Appellant.

Mr.V.R.Dhond i/by Prem Ranga for the Respondent No.1.

Mr.N.H.Seervai, Sr.Counsel with Mr.Phiroz Pooniwala i/by M/s.Crawford Bayley & Co. for the Respondent No.2.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 22nd SEPTEMBER, 2006.

ORAL ORDER : (Per R.M.LODHA,J)

. We heard Mr.S.H.Doctor, the senior counsel for

the Appellant; Mr.V.R.Dhond, the counsel for Respondent No.1-Company and Mr.N.H.Seervai, the senior counsel for the Respondent No.2.

2. The Appellant made an application under section 84(4) of the Companies Act, 1956, being Company Application No.101 of 2005 before the learned Company Judge, praying therein that the first Respondent Company, namely, Godfrey Phillips India Ltd., be directed to forthwith issue duplicate share certificates for 8,350 equity shares held by the Applicant-Appellant. In the said Company Application, K.K.Modi (the second respondent) made an Application, directing the Applicant (Appellant herein) to implead him as party Respondent in the Company Application. We are informed that vide order dated 20th January, 2006, the Application made by Mr.K.K.Modi for his impleadment, was made absolute.

3. The learned Company Judge heard the parties and by the order dated 6th of July, 2006, took the view that it was not a fit case for entertaining the company Application.

4. Aggrieved thereby, the present Appeal has been preferred by the original Applicant.

5. We shall refer to the parties as described in the company application, viz., ‘the applicant’, ‘the first respondent company’ and ‘the second respondent’.

6. Section 2(11) of the Companies Act, 1956, (for short, ‘the Act of 1956’) defines the term ‘the Court’, which interalia means with respect to any matter relating to a Company, the Court having jurisdiction under the Act of 1956 with respect to that matter relating to that Company, as provided in section 10. Section 10 deals with the jurisdiction of the court.

7. In the case of **Santosh Poddar vs. Kamalkumar Poddar & others, 1992 (3) Bom.C.R. 310,** the Division Bench of this court held, though in different context, that there is no ouster of the jurisdiction of a Civil Court in all cases where the provisions of the Companies Act may be attracted. It was held that it was only in respect of those proceedings which are expressly contemplated under the Companies Act under any specific provision that the court referred to in section 2(11) read with section 10, would be the special court, namely, the High Court or the notified District Court. In all other cases ordinarily Civil Courts would continue to have jurisdiction.

8. In the case of **Inter Sales vs. Reliance Industries Ltd., & Ors.,2002 (Vol.108) 680,** the Division Bench of the Calcutta High Court held that to fall within the jurisdiction of "the court" as defined in section 2(11) read with section 10 of the Companies Act, 1956, the matter should be such as is provided by the Act to be adjudicated by "the court". In respect of the matters regarding which the Act does not provide for adjudication by the court, the adjudicating authority cannot mean "the court" as defined by section 2(11). The Calcutta High Court further held that it is only where the Act provides for adjudication by "the court", that "the court" would mean the court as defined in section 2(11). It was further held that the definition clause cannot be given the interpretation that whenever there is a dispute relating to a company, it is the company court as defined in section 2(11) that will have the jurisdiction.

9. A single Judge of the Gujarat High Court in the case of **M.G.Doshit vs. Reliance Petrochemicals Ltd., 1994 (Vol.79) 830,** held that the High Court under the Companies Act is a ‘special court’ with special company jurisdiction and that jurisdiction has to be found from specific provision of the Act. The High Court does not have any general plenary or residuary jurisdiction to

deal with all matters and all questions arising under the Companies Act.

10. In the case of **R.Prakasam vs. Sree Narayan Dharma Paripalana Yogam, 1980 Company Cases (vol.50) 611,** the learned single Judge of the Kerala High Court, held that section 10 of the Companies Act does not purport to invest the company court with jurisdiction over every matter arising under the Companies Act.

11. Mr.S.H.Doctor, the senior counsel for the Appellant (Applicant Company) relied upon the judgment of the Rajasthan High Court in the case of **Maharaj Kumar Mahendra Singh vs. Lake Palace Hotels & Motels Pvt.Ltd.,& others, 1985 (Vol.58) Company Cases 805,** in support of his contention that the Application under section 84(4) could be entertained by the High Court in its company jurisdiction. He particularly relied upon the observations made by the learned single Judge of the Rajasthan High Court that all matters arising under the Companies Act can be heard by the High Court which are not covered under the notification issued under sub-section (2) of section 10 of the Companies Act by the Central Government.

12. Mr.S.H.Doctor also relied upon the brief order of the Supreme Court in the case of **Shripal Jain vs. Torrent Pharmaceuticals Ltd., & others 1995 Supp (4) Supreme Court Cases 590,** where, with relation to the Application under section 84(4), it was held that for issuance of duplicate certificates on account of loss of original ones, the proper forum to grant such relief under section 84(4) is not the civil court but the Registrar of Companies.

13. In our considered view, section 10 of the Act of 1956 only determines the territorial jurisdiction of the High Court. The said provision cannot be construed to mean that the High Court has jurisdiction with respect to all matters relating to a Company. Whereever a special remedy before the Special Court has been provided, the legislature has made special provisions under the Act of 1956. That the High Court, as a company court is a special court with special company jurisdiction, needs no elaboration. The jurisdiction of the company court has to be found specifically from the provisions of the Act and it cannot be said that even where no special forum is provided under the Act of 1956, yet the High Court as a company court has jurisdiction to deal with all matters under the

Companies Act. This will mean conferring a special jurisdiction to the Special Court (read High Court in the present case) when the legislature has not provided that specifically and expressly. The power that has been conferred on the High Court under the Companies Act is not plenary power enabling it to deal with all matters and all questions and all issues arising under the Companies Act. We find ourselves in respectful agreement with the view of the Calcutta High Court, Gujarat High Court and Kerala High Court,referred to hereinabove. Our view is also consistent with the decision of this Court in the case of Santosh Poddar.

14. The view of the Rajasthan High Court in the case of **Maharaj Kumar Mahendra Singh (supra),** that all matters arising under the Companies Act can be heard by the company Court which are not covered under the notification issued under sub-section 2 of Section 10 of the Companies Act by the Central Government, does not seem to us to be expositing the legal proposition that all issues and all questions under the Act of 1956 can be adjudicated and determined by the company Court irrespective of whether such special provision has been made under the Act of 1956 or not.

15. In the case of **Shripal Jain (supra),** the Apex Court observed thus :-

> "2. The share certificates purchased by the appellant in respect of M/s. Torrent Pharmaceuticals Ltd., were stolen. The appellant approached the Registrar, Respondent No.2 in the appeal herein, for issue of duplicate certificates. The Registrar directed the appellant to have a direction in this respect from the civil court. The civil court rejected the application of the appellant. The High Court dismissed the civil revision filed by the appellant in limine.
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> 3. We are of the view that the Registrar of the Company was in patent error in referring the appellant to the civil court in the facts and circumstances of the present case. He should have himself held an enquiry into the matter under Section 84(4) of the Companies Act read with the Companies (Issue of Share Certificates) Rules, 1960 and take a decision himself in the matter.
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> 4. We, therefore, set aside the impugned order of the civil court and consequent order of the High Court and remand the case back to the Registrar, Respondent No.2 to decide the matter in accordance with law in the first instance. The appeal is disposed of. No costs."

16. Surely, from the aforesaid observations in **Shripal Jain's** case, it cannot be said that the Application under section 84(4) could be maintained before the company Court by invoking section 2(11) read with section 10 of the Companies Act.

17. We have no hesitation in holding that a special court viz., "company court" cannot be said to have jurisdiction to decide all issues and all questions under the Act of 1956 until specific provision is made in that regard under that Act.

18. With regard to the Application under section 84(4), we find that no specific provision has been made conferring jurisdiction on the company court under section 2(11) read with section 10.

19. In view of what we have stated above, the Appeal has to be dismissed and it is dismissed accordingly. The impugned order, dismissing the Application under section 84(4), though for different reasons, does not call for any interference.

20. Since, we have held that the Company Application under section 84(4) itself was not maintainable before the Company Judge, the findings recorded by the learned Company Judge on merits of the case as to whether 8,350 equity shares have been lost or destroyed, obviously shall have no bearing in any proceeding that the Appellant may be advised to prosecute for redressal of its grievance.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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